DR SHAMENI PILLAI PB RAJEDRAN A

v.

DR S ARULSELVAM SANGGILLY & ANOR

HIGH COURT MALAYA, PULAU PINANG B
VAZEER ALAM MYDIN MEERA JC
[DIVORCE PETITION NO: 33-277-2007]
15 SEPTEMBER 2010

FAMILY LAW: *Divorce - Compensation - Claim for cost of engagement/marriage registration ceremony - Whether petitioner had proven her claim for wedding expenses* C

FAMILY LAW: *Divorce - Maintenance - Determining fair and reasonable maintenance - Factors to be taken into account by court in determining maintenance - Whether petitioner's claim for maintenance highly inflated, unsubstantiated and unreasonable - Whether petitioner financially self-sufficient - Whether a proper case for a clean break - Short, childless marriage between two young persons who are financially self sufficient - Whether only a nominal order for maintenance is appropriate* D E

The petitioner and respondent, both qualified medical doctors, were lawfully married on 5 December 2004 at an engagement cum marriage registration ceremony. After their marriage, the petitioner and respondent worked as Medical Officers with the petitioner earning RM3,147.31 a month and the respondent earning RM3,457.17 a month. The petitioner filed this divorce petition alleging that the respondent and co-respondent were having an extra marital affair. The petitioner and respondent had separated since August 2005. The marriage had lasted some eight months. Pursuant to the petitioner's application, the High Court had ordered that the respondent pay the petitioner RM500 a month as interim maintenance. The petitioner was currently pursuing her postgraduate specialization in Radiology. The respondent was working for private clinics on a part time basis (*ie*, as "locum") earning about RM4,500 a month. The respondent argued that the petitioner was not employed by reason of her decision to pursue further studies and that she would be in a far better position financially when she successfully finished her studies. By consent of the parties the court granted divorce to the petitioner and the F G H I

respondent. The respondent however contested the petitioner's following claims: (i) that the respondent pay her a monthly maintenance of RM7,500; (ii) that the respondent return her belongings and medical books worth RM12,000; and (iii) that the respondent pay her a sum of RM87,900 being the engagement/ registration ceremony expenses incurred by the petitioner.

Held (dismissing petition):

(1) The issue of a fair and reasonable maintenance must be determined by reference to the facts and circumstances of each case. The power to order maintenance of an ex-wife is a discretionary one which must be exercised judiciously in accordance to general principles. Although s. 78 of the Law Reform (Marriage and Divorce) Act 1976 enjoins the court to have regard to the conduct of the parties, its main focus is the means and needs of the parties which the court must take into consideration when awarding maintenance to an ex-spouse. The courts generally take into account the following factors: (a) the income, earning capacity, property or financial resources which each party has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future; (c) the standard of living enjoyed by the family before the marriage breakdown; (d) the age of each party and the duration of the marriage;(e) health, physical or mental disability of the parties; and (f) the respective contributions by the parties to the welfare of the family. (para 12)

(2) The petitioner's claim for maintenance was highly inflated, unsubstantiated and unreasonable. The law is that the wife, if entitled to maintenance, must be financially provided to enable her to continue living at the standard enjoyed by her before the divorce, *ie*, with an amount which would be reasonably sufficient to maintain the wife in the rank and position of life which she has hitherto occupied, in order to supply her with the necessaries, comfort and advantages incidental to her station in life. The petitioner cannot expect the respondent to support her "new fancies and toys". (para 19)

(3) The petitioner failed to convince the court of her needs. Neither had she convinced the court as to the means of the respondent to pay her RM7,500 a month from his earnings of RM4,500 per month. The petitioner was a professionally qualified medical doctor and was capable of earning a good living. The petitioner was financially self-sufficient and she could be self reliant to maintain herself. Further, the petitioner's young age, the short period of marriage and there being no children to the marriage meant that the petitioner was able to independently pursue a successful career in the medical field. There was absolutely no necessity for the petitioner to rely on the respondent for maintenance. Hence, this was a proper case for a clean break. (para 20)

(4) Neither party had adduced sufficient evidence to indicate as to who was responsible for the marriage breakdown. The petitioner had not adduced any cogent evidence on the alleged adulterous relationship between the respondent and co-respondent. (para 26)

(5) Where separation follows a short, childless marriage between two young persons each of whom is fully capable of or is earning his or her own living, a nominal order for maintenance is appropriate. In light of the interim maintenance order, it was not appropriate to order any further nominal maintenance. The interim maintenance payments to date sufficed. Accordingly the claim for maintenance was dismissed. (para 27)

(6) The petition was devoid of any particulars of the medical books. There was also no averment in the petition identifying the cause of action that the petitioner was relying on to seek the return of the books. The petitioner had also failed to prove her claim in this regard. Therefore, the claim for the return of the books was dismissed. (para 28)

(7) The petitioner stated in her evidence that she had agreed to bear the entire cost of the engagement/registration ceremony. Therefore, it was now not open to the petitioner to claim the entire cost of it from the respondent just because the Hindu rites ceremony did not take place or that the marriage had broken down irretrievably. The petitioner had failed to prove her claim for the wedding expenses. (para 32)

Case(s) referred to:
C v. A [1998] 1 LNS 219 HC ***(refd)***
C v. C [1962] 4 FLR 461 ***(refd)***
Choong Yee Fong v. Ooi Seng Keat; Chua Chong Hong (Joint Respondent) [2006] 5 CLJ 144 HC ***(refd)***
Frisby v. Frisby [1984] 14 Fam Law 19 ***(refd)***
Graves v. Graves [1973] 117 Sol J 679 ***(refd)***
Khan v. Khan [1980] 1 All ER 497 ***(refd)***
Koay Cheng Eng v. Linda Herawati Santoso [2005] 1 CLJ 247 HC ***(refd)***
Koay Cheng Eng v. Linda Herawati Santoso [2008] 4 CLJ 105 CA ***(refd)***
Lim Chau Leng v. Wong Chee Chong [2006] 2 MLJ 269 ***(refd)***
Loke Wan Tho v. Christina Loke [1961] 1 LNS 54 ***(refd)***
Lumsden v. Lumsden [1963] 5 FLR 388 ***(refd)***
Sengol v. De Witt [1986] 1 LNS 62 HC ***(refd)***
Soni v. Soni [1984] FLR 294 ***(refd)***
Thevathasan v. Thevathasan [1960] 1 LNS 153 HC ***(refd)***
V Sandrasagaran a/l Veerapan Raman v. Dettasassar Velentine Souvina Marie Vol 7(2) Mallal's Digest (4th ed 2003 reissue) para 3130 ***(refd)***
Wachtel v. Wachtel [1973] 1 All ER 829 ***(refd)***

Legislation referred to:
Law Reform (Marriage and Divorce) Act 1976, ss. 77(1), 78

Other source(s) referred to:
Tan Cheng Han, *Matrimonial Law in Singapore and Malaysia, Butterworth's Asia 1994,* p 212

For the petitioner - Darshan Singh Khaira; M/s Darshan Singh & Co
For the respondent - K Kandiah; M/s Mohd Latip & Assocs

Reported by Amutha Suppayah

JUDGMENT

Vazeer Alam Mydin Meera JC:

[1] The petitioner and the respondent had known each other since their days together at medical college in Indonesia and later in Malacca. The petitioner and respondent are both qualified medical doctors. They were lawfully married on 5 December 2004 at an engagement cum marriage registration ceremony held at No. 39, Jalan Sg Emas 5, Batu Feringghi, Pulau Pinang.

[2] After their marriage, the petitioner and respondent worked at the Penang Hospital as Medical Officers and were residing at the Penang Hospital Quarters. At the relevant time the petitioner was earning RM3,147.31 a month while the respondent was earning RM3,457.17 a month.

[3] The petitioner filed the divorce petition herein on 13 April 2007, alleging that sometime in February 2005 the respondent and the co-respondent, who was nurse at the Penang Hospital, were having an extra marital affair which had resulted in the respondent neglecting the petitioner and refusing to have any marital relations or staying under the same roof. The petitioner then instituted proceedings *via* Penang High Court Civil Suit No. 22-641-2005 against the co-respondent *inter alia* for orders to restrain the co-respondent from interfering in her marriage as well as for damages, interest and cost. The petitioner had also lodged complaints with the Pengarah Hospital Pulau Pinang against the co-respondent. This allegation of infidelity is vehemently denied by the respondent.

[4] Sometime since August 2005, the petitioner and respondent had separated. In November 2005 the respondent was transferred to Hospital Besar Klang, Selangor. The petitioner remained in Penang until November 2006 when she was transferred to Hospital Ampang, Selangor. The marriage had lasted some eight months.

[5] Sometime in 2006, the petitioner had filed for interim maintenance *vide* Penang High Court Originating Summons No. 24-944-2006 and the High Court had on 27 November 2006 ordered that the respondent pay the petitioner RM500 a month as interim maintenance beginning 1 January 2006.

[6] The respondent and co-respondent had filed their respective replies to the petition denying the specific allegations contained therein. On 27 March 2009, the parties entered into a consent order and the following terms were recorded:

a. that the petitioner withdraws her allegation against the co-respondent and accordingly the claim against the co-respondent was struck off without cost;

b. that the petitioner shall discontinue the Penang High Court Civil Suit No. 22-641-2005 against the co-respondent;

A c. in respect of the petitioner's claim as contained in para. 17 of the petition, the petitioner withdrew her claim as in prayer (d) for punitive, aggravated and exemplary damages in the sum of RM1.5 million against the respondent; and prayer (e) for damages against the co-respondent; and prayer (g) for interest;

B d. in respect of prayer (a) of para. 17 of the petition, by consent of the parties the court granted divorce to the petitioner and the respondent and a *decree nisi* to be made absolute in three months was pronounced and recorded on the same day;

C f. the petitioner and respondent had agreed that the only remaining issues to be determined at trial were:

i. the petitioner's claim as in prayer (b) of para. 17 of the petition for the respondent to pay monthly maintenance of
D the sum of RM7,500 from 1 September 2005;

ii. the petitioner's claim as in prayer (c) of para. 17 of the petition ordering the respondent to return the petitioner's belongings and medical books worth RM12,000; and

E iii. the petitioner's claim as in prayer (f) of para. 17 of the petition that the respondent pay the petitioner the sum of RM87,900 being the wedding expenses incurred by the petitioner.

F **[7]** The following witnesses gave evidence at trial:

a. the petitioner (SP1);

b. the petitioner's father P.B. Rajedran (SP2); and

G c. the respondent (SR1).

Maintenance

[8] There is an undeniable economic dimension to marriage. Historically and traditionally, the husband assumes the role of the
H provider and the wife the role of the homemaker. Therefore, during the subsistence of the marriage, the law recognises that husband has the duty and obligation to financially maintain the wife. This financial obligation does not necessarily end with the
I dissolution of the marriage. Tan Cheng Han in *Matrimonial Law*

in Singapore and Malaysia, Butterworth's Asia 1994 at p. 212 gives the following rationale for the continued maintenance of a former wife:

> Merely because the marriage has come to an end does not mean that a woman's ex-husband no longer has any obligation to maintain her. The ex-wife who has invested many years of her life in the relationship may still be in need of reasonable maintenance. This is especially so where she has played the role of the homemaker. Having subordinated her chance of an independent career it would be most inequitable if the ex-husband's obligation came to an end at the end of the marriage. It would also be inconsistent with the idea that there is an economic dimension to marriage.

[9] In the Victoria Supreme Court case of *C v. C* [1962] 4 FLR 461 at 466 Lowe, Dean Pape JJ unanimously held that:

> The word 'maintenance' has a wide meaning. In *Acworth v. Acworth* Scott LJ said: '... 'Maintenance' is a very wide word, and in my view it should be read as covering everything which a wife may in reason want to do with the income which she enjoys. It includes much more than food, lodging, clothes, travelling, and so on. It includes for instance, charity and making arrangements for the future, thus incurring various liabilities in her discretion, and it is wrong to limit it to any particular form of expenditure.' In *Re Borthwick (Deceased); Borthwick & Anor v. Beauvais & Ors* [1949] CH 395 Harman J said at p 401, as follows:
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> > It is said that maintenance is the only thing that you can look at. What does that mean? It does not mean that you can only give the dependant just enough to put a little jam on his bread and butter. It has been already held that what is reasonable for one may not be reasonable for another. It must depend on the circumstances of the case. It certainly depends to some extent on the circumstances of the widow, but I think it may also depend on the circumstances of the testator, that is to say, whether he dies a rich man or not, because a rich man may be supposed to have made better provision for his wife's maintenance than a poor one. Maintenance does not only mean the food she puts in her mouth, it means the clothes on her back, the house in which she lives, and the money which she has in her pocket, all of which vary according to the means of the man who leaves a wife behind him. I think that must be so. Maintenance cannot mean only a mere subsistence.

[10] Though the definition in *Re Borthwick* emanates from a case involving a testator and maintenance for his widow under his will, the principle enunciated therein has been accepted and applied in matrimonial cases in Malaysia (see the High Court decision in *Koay Cheng Eng v. Linda Herawati Santoso* [2005] 1 CLJ 247 subsequently confirmed by the Court of Appeal as reported in [2008] 4 CLJ 105).

[11] The power to award maintenance to an ex-wife is clearly provided by s. 77(1) of the Law Reform (Marriage and Divorce) Act 1976 (LRA) which stipulates that the court may order a man to pay maintenance to his former wife subsequent to the grant of a decree of divorce. Further s. 78 of the LRA provides that in assessing the amount of maintenance to be paid by a man to his wife or former wife, 'the court shall base its assessment primarily on the means and needs of the parties, regardless of the proportion such maintenance bears to the income of the husband, but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage'.

[12] The issue of a fair and reasonable maintenance must be determined by reference to the facts and circumstances of each particular case. The power to order maintenance of an ex-wife is a discretionary one which must be exercised judiciously in accordance to general principles. These principles have been generally construed as guidelines and not strict rules with universal application. This was aptly pointed out by Lord Denning in *Wachtel v. Wachtel* [1973] 1 All ER 829 at p 830, which reads:

> We would emphasise that this proposal is not a rule. *It is only a starting point. It will serve in cases where the marriage has lasted for many years and the wife has been in the home bringing up the children. It may not be applicable when the marriage has lasted only a short time, or where there are no children and the wife can go out to work.* (emphasis added).

[13] The English courts have consistently held that where separation follows a short, childless marriage between two young persons, and each of whom is fully capable of or is earning his or her own living, a nominal order for maintenance is appropriate (see *Graves v. Graves* [1973] 117 Sol J 679, *Khan v. Khan* [1980] 1 All ER 497, *Soni v. Soni* [1984] FLR 294, 14 Fam Law 268, *Frisby v. Frisby* [1984] 14 Fam Law 19). This position has been adopted

with approval by the courts in Malaysia and Singapore (see *Sengol v. De Witt* [1986] 1 LNS 62 and *C v. A* [1998] 1 LNS 219. In fact in some cases the courts have refused to order any maintenance to be paid (see the case of *V Sandrasagaran a/l Veerapan Raman v. Dettasassar Velentine Souvina Marie Vol 7(2) Mallal's Digest* (4th ed 2003 reissue) para 3130 and *Choong Yee Fong v. Ooi Seng Keat; Chua Chong Hong (Joint Respondent) & Anor* [2006] 5 CLJ 144).

[14] Although s. 78 LRA enjoins the court to have regard to the conduct of the parties, its main focus is the means and needs of the parties which the court must take into consideration when awarding maintenance to an ex-spouse. The courts have generally taken into account the following factors:

a. the income, earning capacity, property or financial resources which each party has or is likely to have in the foreseeable future;

b. the financial needs, obligations and responsibilities which each party has or is likely to have in the foreseeable future;

c. the standard of living enjoyed by the family before the marriage breakdown;

d. the age of each party to the marriage and the duration of the marriage;

e. health, physical or mental disability of the parties; and

f. the respective contributions by the parties to the welfare of the family;

[15] Guided by these consideration and the ambit of s. 78 of the LRA, let me now consider the respective cases of the petitioner and respondent. The petitioner is claiming for maintenance of RM7,500 per month. While the husband contends that the wife is not entitled to any maintenance. At the time of trial the petitioner had voluntarily left government employment to pursue post graduate specialization studies at the Dalian Medical University in China. The petitioner has itemized her claim for maintenance under several categories as follows:

i.	Rental	RM1,200
ii.	Food	RM 750
iii.	Car rental	RM 750
iv.	Clothes	RM 450
v.	Transport & petrol	RM 900
vi.	Utilities	RM 600
vii.	Domestic maid	RM 500
viii.	Entertainment	RM1,000
ix.	Miscellaneous	RM1,350

[16] The petitioner aged 35 is a qualified medical doctor and the respondent aged 36 is also a qualified medical doctor. They both graduated from the same university and commenced work in Penang Hospital earning almost identical wages. The petitioner gave evidence that she is in good health. She is currently pursuing her postgraduate specialization in Radiology in China on a partial Chinese government scholarship and partly using her savings and withdrawal from her EPF Account. She is also getting some financial support from her father in this regard. During the subsistence of the marriage, on the average their respective income was RM3,500 a month. Immediately after the marriage they both were staying in a room in the Penang Hospital Quarters which cost them between RM10-RM20 a month. The respondent had after leaving government service started a private clinic in Klang sometime in June 2008. The clinic did not do well and in March 2010 the respondent sold the clinic and is now working for others in private clinics on a part time basis. In the industry this is known as "locum". This the respondent says brings him about RM4,500 a month, which according to him is barely enough to make ends meet. The respondent complains that the interim maintenance of RM500 adds to the strain on his finances. The respondent also argues that though the petitioner is not employed by reason of her decision to pursue further studies, she would be in a far better position financially when she successfully finishes her studies. In fact the petitioner had in evidence stated that as a

qualified Radiologist she can earn RM5,000 in government service. And of course she would be able to earn much more in the private sector.

[17] Mr Darshan Singh counsel for the petitioner submits that the maintenance ought to be sufficient to allow for the same standard of living the petitioner was used to during marriage and argues that the sum of RM7,500 a month is a reasonable. Mr Darshan Singh further submits that it is the respondent who is responsible for the breakdown of the marriage by his association with a third party and that this ought to be construed against the respondent in the assessment of maintenance to be awarded.

[18] Ms K Kandiah counsel for the respondent argues that the petitioner's claim is unreasonable and is a ploy to make false and inflated claims so as to prevent the respondent from living his life peacefully without her interference. In fact during the short period of living together, the petitioner had no car, no maid, nor extravagant entertainment or expensive holidays. In cross examination the respondent gave evidence that they both earned wages as doctors but it was his salary of RM3,500 that paid the bills when they had lived together. Therefore, Ms Kandiah's argument is that, if they had lived on RM3,500 how is it that the petitioner alone now needs RM7,500 a month. After all they lived at the hostel with very little trappings of luxury. They had lived separately within a few short months of marriage. The respondent lived on his own and the petitioner with her parent. All in all the marriage lasted some six months at the most.

[19] I find merit in Ms Kandiah's argument. I find the petitioner's claim for maintenance to be highly inflated, unsubstantiated and unreasonable. The petitioner cannot simply throw a figure at the court and say that is what she is entitled to. She must prove her claim. The law is that the wife, if entitled to maintenance, must be financially provided to enable her to continue living at the standard enjoyed by her before the divorce, ie, with an amount which would be reasonably sufficient to maintain the wife in the rank and position of life which she has hitherto occupied, in order to supply her with the necessaries, comfort and advantages incidental to her station in life: per Buttrose J in *Loke Wan Tho v. Christina Loke* [1961] 1 LNS 54; per Herring CJ, Dean and Gowans JJ in *Lumsden v. Lumsden* [1963] 5 FLR 388, at p 394.

[20] I agree that the petitioner cannot expect the respondent to support her "new fancies and toys". That is not the intent and purpose of providing maintenance. The provisions of s. 78 LRA is very clear, the needs and means of the parties are of paramount importance. Here, the petitioner has failed the test on both counts; she has failed to convince the court of her needs and neither has she convinced the court as to the means of the respondent to pay her RM7,500 a month from his earnings of RM4,500 per month. This court cannot accede to the unreasonable claims of the petitioner. The petitioner is a professionally qualified medical doctor and licensed to practice in Malaysia. Hence, she is capable of earning a good living. In addition, she is young and has many gainful years ahead of her. The potential earning power of the petitioner must be considered. Moreover, as the couple has no children to the marriage the Petitioner is free to lead her own independent life as a medical doctor without any responsibility to raise children. In *Thevathasan v. Thevathasan* [1960] 1 LNS 153 Ambrose J sitting in the Singapore District Court of Appeal had made the following observation:

> Here it must be pointed out that the Court of Appeal in England stated in the case of *Rose v. Rose* [1950] 2 All ER 311, that the question whether the potential earning capacity of a wife is to be taken into account in assessing maintenance depends on the facts of each case and no general rule can be laid down. In the same case Denning LJ said (at page 313):
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> > ... if she (ie, the wife) is a young woman with no children, and obviously ought to go out to work in her own interest, but does not, then her potential earning capacity ought to be taken into account. ...
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> In the present case I took the view that the respondent ought to go out to work in her own interest. She is a young woman with no children, and work with its attendant responsibilities would help to develop her character along the right lines.

[21] In *V Sandrasagaran a/l Veerapan Raman v. Dettarassar Velentine Souvina Marie (supra)* Faiza Tamby Chik J had similarly expressed the view that:

> With no children to the marriage the respondent would be able to adjust herself to her former position within a short period of time. Being capable young and since she had worked before, she would be able to find a job and fend for herself.

[22] This view was reiterated by Faiza Tamby Chik J in *Choong Yee Fong v. Ooi Seng Keat; Chua Chong Hong (Joint Respondent)* [2006] 5 CLJ 144 where in considering and dismissing the petitioner's claim therein for maintenance, he held that:

> In gist, the petitioner has the means within the contemplation of s. 78 of the Act, to be self-sufficient and self reliant. It must be emphasized that the marriage though registered in 1984, has lasted for less than 10 years and with no children. Although the parties have since lived separately in 1994, the marriage for all intents and purposes, has broken down irretrievably even before the physical separation in 1994. The petitioner who was 31 years in 1994 was working and self-supportive until her alleged unemployment in 2001. The petitioner has been able to support herself financially since the parties have lived apart in 1994. The petitioner's needs are limited to the expenses incurred on herself.

[23] I agree with the reasoning provided by Justice Faiza Tamby Chik in the above two cases. It is my considered view that in the present case the petitioner is financially self-sufficient and she can be self reliant to maintain herself. Further, the petitioner's young age, the short period of marriage and there being no children to the marriage means that the petitioner is able to independently pursue a successful career in the medical field. The petitioner's earning capacity in the foreseeable future is indeed very bright. There is, in the circumstance, absolutely no necessity for the petitioner to rely on the respondent for maintenance. I believe that this is a proper case for a clean break. The parties should just move on.

[24] The duration of the marriage was very short. The parties lived together only for several months. Duration is relevant and of importance in deciding the issue of maintenance as per Lord Denning in *Wachtel v. Wachtel (supra)*. The short period of marriage had not occasioned the petitioner to lose her prospects of employment or career advancement. She has not insubordinated her chance of an independent career. In fact her early release from this short ill fated union had allowed her to pursue postgraduate studies to better herself professionally and to make her future employment prospects better.

[25] On the issue of blame for the marriage breakdown, in reply to Mr Darshan Singh's submission, Ms K Kandiah had argued that the issue of blame cannot rise as the petitioner had withdrawn her case against the co-respondent and the parties had agreed to a divorce by mutual consent without apportioning blame. In fact when Mr Darshan Singh during cross examination sought to pose questions relating to the respondent's infidelity and conduct *vis-à-vis* the third party, this was vehemently opposed by Ms K Kandiah. I had after hearing submissions on this issue allowed Mr Darshan Singh to ask questions relating to blame as s. 78 LRA mandates the court to look into the issue of blame in deciding the issue of maintenance. I had also taken note of the fact that *albeit* there was a consent order as to divorce and the petitioner had discontinued her action against the co-respondent, the allegations of infidelity against the respondent had remained in the pleadings. The court was not privy to the terms of the agreement leading to the consent order of 27 March 2009 and is as such not bound by the terms agreed to between the parties (see the case of *Lim Chau Leng v. Wong Chee Chong* [2006] 2 MLJ 269).

[26] Even upon my ruling that evidence relating to blameworthiness may be adduced neither party had adduced sufficient evidence to indicate one way or the other as to who was responsible for the marriage breakdown. The petitioner had not adduced any cogent evidence on the alleged adulterous relationship between the respondent and co-respondent. The respondent on the other hand had argued that it was the petitioner's conduct in making the unfounded allegation against the co-respondent and the lodging of a complaint to the Pengarah Hospital Pulau Pinang against the co-respondent that had caused the breakdown of the marriage. I find that there is insufficient evidence to indicate either way as to who was responsible for the breakdown or whether both parties had their respective share of blame.

[27] Therefore, independent of the issue of blame, and based on the fact that the petitioner is young, ably qualified, and financially capable of maintaining herself; and based on the further grounds that the petitioner is childless from the marriage, and employing the means and needs test as expounded in s. 78 LRA, I find that the petitioner is financially self reliant to maintain herself. As pointed

out earlier, there are case authorities that suggest where separation follows a short, childless marriage between two young persons each of whom is fully capable of or is earning his or her own living, a nominal order for maintenance is appropriate. However, in the light of the interim maintenance order where the respondent had been paying the sum of RM500 per month from 1 January 2006, I do not find it appropriate to order any further nominal maintenance. The interim maintenance payments to date would suffice. Accordingly I dismissed the claim for maintenance.

The Medical Books

[28] In para. 10 of the petition, the petitioner avers that respondent was in possession of her medical text books worth RM12,000 and in para. 17 prayer (c) the petitioner prays for an order to compel the respondent to return these books to her. The petition itself is devoid of any particulars of these books. Apart from this, there is no averment in the petition identifying the cause of action, be it conversion or bailment, that the petitioner is relying on to seek the return of these books. Only after the trial had commenced did the petitioner produce a list of books (exh. P2) which she claimed were brought to the respondent's father's house in Port Klang after she had finished her medical degree in a college in Malacca.

[29] The respondent denies ever having taken these books from the petitioner nor keeping them in his father's house. The petitioner's father (SP2) then tendered several photographs taken at the respondent's parent's house (marked as exhs. D19 and D20) which showed a book rack with some books. The petitioner claims that these are her books. However, I must say that the book titles are not very legible in the photographs and the photographs are of very little assistance to the court. Taking the evidence as a whole, I find that the petitioner has failed to prove her claim in this regard. The court cannot order the return of items which have not been proved to be in the possession of the respondent. Therefore, the claim for the return of these books is dismissed.

The Claim For Wedding Expenses

[30] The petitioner claims to have spent RM87,900 as expenses for the engagement/marriage registration ceremony held on 5 December 2004. The petitioner in her evidence stated that she had agreed to bear the cost of the engagement/marriage registration ceremony while the respondent was to bear the cost of the Hindu rites wedding ceremony to be held later. The Hindu rites ceremony which according to the respondent was supposed to be held in Kuala Lumpur did not take place. Therefore, the petitioner is claiming the entire cost of the engagement/marriage registration ceremony amounting to RM87,900.

[31] The respondent on the other hand denies that there was such an agreement for a traditional Hindu wedding or that the petitioner bears the cost of engagement/registration and that the respondent bears the cost of the Hindu wedding. He states in his evidence that he never agreed for a Hindu rites ceremony and no date was ever fixed for a Hindu wedding ceremony in Kuala Lumpur. According to the respondent, the entire engagement/registration ceremony was planned and executed by the petitioner and her family. The respondent did not have any say in the arrangements on 5 December 2004 nor was he told of the cost or asked to share it. The respondent says that he only found out about the cost after the divorce petition herein was filed.

[32] Having sieved through the evidence, I find that the petitioner had failed to prove on a balance of probabilities that there was an agreement for a Hindu wedding ceremony to be held in Kuala Lumpur, the cost of which was to be borne by the respondent. In any event, the petitioner has stated in her evidence in chief that she had agreed to bear the entire cost of the engagement/registration ceremony. Further, the petitioner's father (SP2) in his evidence confirmed that he had agreed to bear the cost of the engagement/registration ceremony and had in fact paid for it. Therefore, it is now not open to the petitioner to claim the entire cost of it from the respondent just because the Hindu rites ceremony did not take place or that the marriage had broken down irretrievably. The petitioner also failed to put this to the respondent during cross examination as part of the petitioner's case. In the absence of any agreement and in the face of clear admission to the contrary by the petitioner, I find that the petitioner has failed to prove her claim for the wedding expenses.

[33] Wherefore, I made the following orders:

a. prayers (b), (c), (f), (g) and (h) in para. 17 of the petition are dismissed with cost; and

b. the interim maintenance order dated 27 November 2006 made by the Penang High Court *vide* Suit No. 24-944-2006 is set aside.